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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

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BRIAN CARTER,  
Plaintiff,

v.

WEBER COUNTY STRIKE FORCE;  
OFFICER LUNT; and OGDEN POLICE  
DEPARTMENT,

Defendants.

**MEMORANDUM DECISION AND  
ORDER DENYING WITHOUT  
PREJUDICE MOTION FOR  
APPOINTMENT OF COUNSEL  
(DOC. NO. 61)**

Case No. 1:23-cv-00094

District Judge Tena Campbell

Magistrate Judge Daphne A. Oberg

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Plaintiff Brian Carter is proceeding in this case without an attorney and *in forma pauperis* (without paying the filing fee).<sup>1</sup> Mr. Carter now moves for appointment of counsel.<sup>2</sup> Because Mr. Carter does not provide a reason for his request, the motion is denied without prejudice.

While defendants in criminal cases have a constitutional right to representation by an attorney,<sup>3</sup> “[t]here is no constitutional right to appointed counsel in a civil case.”<sup>4</sup> Appointment of counsel in civil cases is left to the court’s discretion.<sup>5</sup> Indigent parties in

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<sup>1</sup> (See Order Granting Mot. to Proceed in Forma Pauperis, Doc. No. 4; Compl., Doc. No. 5.)

<sup>2</sup> (Mot. for Appointment of Counsel, Doc. No. 6.)

<sup>3</sup> See U.S. Const. amend. VI; Fed. R. Crim. P. 44.

<sup>4</sup> *Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989).

<sup>5</sup> *Shabazz v. Askins*, 14 F.3d 533, 535 (10th Cir. 1994).

civil cases may apply for the appointment of counsel under 28 U.S.C. § 1915(e)(1), which allows a court to “request an attorney to represent any person unable to afford counsel.” The applicant has the burden to convince the court his/her/their claim has enough merit to warrant appointment of counsel.<sup>6</sup> When deciding whether to appoint counsel, the court considers a variety of factors, including “the merits of the litigant’s claims, the nature of the factual issues raised in the claims, the litigant’s ability to present [the] claims, and the complexity of the legal issues raised by the claims.”<sup>7</sup>

Mr. Carter asks the court to appoint counsel but states no reason or basis for the request, other than that he has been granted leave to proceed *in forma pauperis*. To begin with, this statement is inaccurate—Mr. Carter is not proceeding *in forma pauperis*. Indigent plaintiffs may request to proceed *in forma pauperis* if they cannot afford the fee to file a case in this court.<sup>8</sup> Because Defendant Weber County Strike Force removed this case from state court to federal court,<sup>9</sup> that defendant—not Mr. Carter—paid the filing fee. But even if Mr. Carter were proceeding *in forma pauperis*, as outlined above,

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<sup>6</sup> *McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

<sup>7</sup> *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (internal quotation marks omitted).

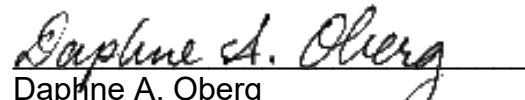
<sup>8</sup> See DUCivR. 3-2(a).

<sup>9</sup> (See Notice of Removal, Doc. No. 2.)

this is insufficient to warrant appointment of counsel in a civil case. Accordingly, the court DENIES Mr. Carter's motion for appointment of counsel<sup>10</sup> without prejudice.<sup>11</sup>

DATED this 6th day of June, 2024.

BY THE COURT:

  
Daphne A. Oberg  
United States Magistrate Judge

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<sup>10</sup> (Doc. No. 61.)

<sup>11</sup> Because the motion is denied without prejudice, Mr. Carter may (if he chooses) file a new motion explaining why, under the factors outlined above, his case warrants the appointment of counsel.